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RECORD, CASE No. 13,680.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 119.

S. A. KNAPP, JOHN FORBES, D. L. BLISS, AND GEORGE F. FORD, PLAINTIFFS IN ERROR,

vs.

GEORGE J. GARRISON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED OCTOBER 1, 1889.

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1 *Complaint.*

In the District Court of the State of Nevada, County of Esmeralda.

GEORGE J. GARRISON, Plaintiff,
vs.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants. } Complaint.

The above-named plaintiff complains of the above-named defendants and for cause of action avers:

1. That plaintiff is and at all times hereinafter mentioned was a citizen of the United States.

2. That on or about the 29th day of September, A. D. 1888, he discovered a lode of quartz rock in place bearing gold in valuable quantities within the limits of that certain mining location, situate in Hawthorne mining district, Esmeralda county, Nevada, known as the Lake View West mine, more particularly described as follows, to wit: Beginning at a post marked east end lode line Lake View west, situated on Pamlico hill, whence west lode line post of the Lake View mining claim bears N. 49° 30′ W. 23 9/10 feet distant; thence, 1st course, S. 32° E. 149 feet to post marked N.
2 E. corner of Lake View West mine; thence, 2d course, S. 84° 30′ W. 1,495 feet to a post marked S. W. corner of Lake View West mine; thence, 3d course, N. 10′ W. 269 ft. to post marked the W. center lode line of Lake View West mine; thence, 4th course, N. 4° 40′ W. 298 ft. to post marked the N. W. corner Lake View West mine; thence, 5th course, S. 86° 40′ E. 1,348 ft. to post No. 1 of the Lake View mine and N. E. corner of Lake View mine; the-, 6th course, S. 31° 50′ E. to place of beginning.

3. That after discovering said lode plaintiff located the same by posting a notice thereon claiming fifteen hundred linear feet thereof and three hundred feet on each side of the center of the lode and by distinctly marking the location on the ground, so that the boundaries thereof could be readily traced and by complying in all other respects with the laws of the United States and the State of Nevada and with the local laws, rules, and customs of said Hawthorne mining district.

4. Plaintiff further avers that on, to wit, September 29th, A. D. 1888, he became and was by means of the aforesaid discovery
3 and location the owner and was entitled to the possession of said Lake View West mining claim, lode, and location, and ever since said date plaintiff has been and he now is the owner and entitled to the possession of said Lake View mining claim, lode, and location and every part thereof.

5. Plaintiff, further complaining, avers that on or about the 30th day of September, A. D. 1888, and at divers and sundry times since September 30th, A. D. 1888, and before the commencement of this action, the defendants wrongfully and unlawfully entered upon the said Lake View West lode, mining claim, and location and wrong-

fully and unlawfully broke down, mined, extracted, and removed from said Lake View lode, mining claim, and location and converted to their own use about fifty (50) tons of the earth, gold-bearing rock, and ore thereof of the value of fifty thousand ($50,000) dollars, to the damage of plaintiff in the sum of fifty thousand dollars.

Plaintiff, further complaining, avers:

6. That on, to wit, the 10th day of October, A. D. 1888, the defendant S. A. Knapp, for himself and the other defendants, made an application to the register and receiver of the United
4 States land office at Carson, Nevada, to purchase from the United States a certain piece of mineral land, situate in Hawthorne mining district, Esmeralda county, Nevada, known as the "Pamlico" and more particularly described as follows, to wit: Beginning at the S. E. corner location post No. 1 and running thence, 1st course, N. 33° 57′ W. 959 ft. to post No. 5; thence, 2d course, N. 21° 49′ W. 541 ft. to N. E. corner post No. 2; thence, 3d course, S. 60¼° W. 300 ft. to center of lode, post No. 3; thence from post No. 3, 4th course, S. 25° 12′ E. 749 ft. to post No. 6; thence, 5th course, S. 33° 57′ E. 748 ft. to S. W. corner; thence, 6th course, N. 60¼° E. 300 ft. to center of lode 598 ft. to post No. 1, the place of beginning.

7. That on the 17th day of October, A. D. 1888, said S. A. Knapp and said other defendants caused notice to be given and published of said application.

8. That afterwards and on the 16th day of December, A. D. 1888, plaintiff protested said application in said land office and claimed a portion of the ground applied for by defendants adversely to defendants, to wit, that portion embraced within the limits of
5 said Lake View West mining claim and location; which said portion is particularly described as follows, to wit: Beginning at post No. 1 of the said Pamlico mine (U. S. survey No. 37), thence, 1st course, S. 60¼° W. 20 ft., intersecting the S. line Lake View west mine; thence, 2d course, S. 84° 30′ W. 655 ft., intersecting the west line of the Pamlico U. S. survey 37 between stations No. 4 and No. 6; thence, 3d course, N. 33° 57′ W. 470 ft. to station No. 6 of the Pamlico U. S. survey No. 37; thence, 4th course, N. 35° 12′ W. 90 ft., intersecting the N. line of the Lake View west mine; thence, 5th course, S. 86° 40′ E. 730 ft., intersecting the east line of Pamlico mine U. S. survey No. 37; thence, 6th course, S. 33° 57′ 430 ft. to beginning, containing 7.70 acres.

9. That plaintiff is the owner and is entitled to the possession of said ground; that defendants claim to be the owners and entitled to the possession thereof, but defendants' claim is invalid.

Wherefore plaintiff prays judgment against defendants:

1. For the sum of fifty thousand dollars damages.

6 2. For the ownership and right of possession of said Lake View West mining claim and location, and particularly for that part thereof which is in conflict with said Pamlico location.

3. For costs of suit.

ROB'T M. CLARKE,
Attorney for Plaintiff.

STATE OF NEVADA, } ss:
County of Esmeralda, }

George J. Garrison, plaintiff, being first duly sworn, on oath says that he has read the foregoing complaint and knows the contents thereof, and the same is true of his own knowledge.

GEO. J. GARRISON.

Subscribed and sworn — before me this 8th day of January, A. D. 1889.

W. J. HENLEY, *Clerk.*

Endorsed: Original complaint. District court of the State of Nevada, county of Esmeralda. George J. Garrison, plaintiff, *vs.* S. A. Knapp *et al.*, defendants. Service of the within complaint is hereby admitted this — day of ——, 188–. ——— ——, attorney for —. Rob't M. Clarke, attorney for plaintiff. Filed January
7 8th, 1889. W. J. Henley, clerk. Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

8 In the District Court of the State of Nevada in and for the County of Esmeralda.

GEORGE J. GARRISON, Plaintiff,
vs.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, & GEORGE F. FORD, Defendants.

Action brought in the district court of the State of Nevada in and for the county of Esmeralda and the complaint filed in said county of Esmeralda in the office of the clerk of said district court on the 8th day of January, A. D. 1889.

The State of Nevada sends greeting to S. A. Knapp, John Forbes, D. L. Bliss, and Geo. F. Ford, defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the State of Nevada in and for the county of Esmeralda and answer complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or if served out of this county but in this district within twenty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to — a judgment against you and each of you for the sum of fifty thousand dollars damages for extracting and removing and converting fifty tons of the ore of the Lake View West mine of the value of fifty thousand dollars; also to determine the right of possession of said Lake View West mine, and particularly that said part thereof which is in conflict with the Pamlico mine.

And you are hereby notified that if you fail to answer the com-

plaint the said plaintiff will apply to the court for the relief demanded in the complaint.

Given under my hand and seal of the district court of the State of Nevada in and for the county of Esmeralda this 9th day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

[COURT SEAL.] W. J. HENLEY, *Clerk*,
By ——— ———, *Deputy Clerk*.

8½ Endorsed: Original. Received Jan'y 12, 1 p. m., 1889. Served Jan. 12, 4 p. m., 1889. No. —. District court of the State of Nevada in and for the county of Esmeralda. George J. Garrison, plaintiff, *vs.* S. A. Knapp *et al.*, defendants. Summons. Filed Jan'y 21st, 1889. W. J. Henley, clerk. Rob't M. Clarke, attorney for plaintiff. Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

9 SHERIFF'S OFFICE, *County of Ormsby*, } *ss*:

I hereby certify that I received the within and hereunto annexed summons on the 12th day of January, 1889, and personally served the same on the same day upon the hereinafter-named defendants by delivering to and leaving with each of said defendants personally, in the county of Ormsby, a true copy of said summons—S. A. Knapp, John Forbes, Geo. F. Ford; and I further return that after due search and diligent inquiry I was unable to find D. L. Bliss in Ormsby county; and I further return that on January 19th, 1889, I served Geo. F. Ford, one of the defendants, with a true copy of summons attached to a true copy of the complaint.

J. S. ULLRICK,
Sheriff of Ormsby County, Nevada.

Sheriff's fees, $8.50.

Dated this 19th day of January, 1889.

10 *Petition.*

In the District Court of the State of Nevada, County of Esmeralda.

GEORGE J. GARRISON, Plaintiff,
v.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants.

Petition for removal.

The petition of the above-named defendants shows to the court as follows:

That the complaint in the above-entitled action was filed in the above-named court on the 8th day of January, 1889, and summons issued thereon on the 9th day of January, 1889, and on or before the — day of January, 1889, a copy of said summons was delivered to

all of the defendants, except defendant D. L. Bliss, at Carson City, Ormsby county, State of Nevada, and on the 19th day of January, 1889, a copy of the complaint was delivered to defendant Geo. F. Ford at said Carson City.

That your petitioners or either of them have not yet filed their answer or in any manner plead to plaintiff's complaint, and the time within which defendants are required by the laws of
11 the State of Nevada and the rules of said court in which said action is pending to plead or answer to said complaint has not yet expired.

That said cause has not been tried, and that this is the first term of said court at which the same could by any *probability* be tried; that at all the times hereinbefore mentioned and for many years prior thereto defendants were and ever since have been and now are citizens and residents of the State of Nevada; that the matter in dispute in said action and for which said suit is brought exceeds the sum of two thousand dollars, exclusive of interest and costs.

Your petitioners further show that said suit is one arising under the laws of the United States, and a correct decision of said suit depends upon a right construction of said laws in this: that as matter of dispute, which involves a construction of the laws of the United States, is, What constitutes a discovery of a ledge, lode, or vein of mineral-bearing rock in place? Plaintiff claims in his complaint and so charges the fact to be and as a necessary
12 condition precedent to a valid location that on the 29th day of September, 1888, he discovered a lode of mineral-bearing rock in place which he names and calls the Lake View West, and predicates the location of his said claim and the surface ground thereof upon such discovery. Defendants deny any discovery of a *view*, ledge, or lode of mineral-bearing rock in place by plaintiff or any person in his behalf within the boundaries of said Lake View West location, and will so contend and maintain upon the trial of this cause, and will prove thereat by competent witnesses that they and their predecessors in interest by and through whom they claim, being citizens of the United States, on the 29th day of July, 1885, discovered the same ledge, lode, or *view* of mineral-bearing rock in place that is now claimed, mentioned, and described in plaintiff's complaint, and which is the subject-matter of this suit; that after such discovery and years before the 29th day of September, 1888, they located, claimed, and with monuments of stone and wooden stakes marked a piece of land so that the boundaries thereof
13 can be readily traced, embracing the discovery *view* and point of discovery, the same being fifteen hundred linear feet by three hundred feet on each side of the middle of said *view* and named their claim the Pamlico, and in all respects conformed to and complied with the laws of the United States, the State of Nevada, and the local rules and regulations governing the possessory rights to such mining claims, and that they have at all times since been in the actual peaceable possession of said vein and all other veins within its surface boundaries extending downwards vertically, whose

top or apices are within the surface boundaries marked as aforesaid and the surface ground included therein.

That ever since the date of said discovery and location they have openly and notoriously worked upon said *view* within the boundaries of said claim and have mined, excavated, and extracted ore therefrom, and have in many places on the surface exposed said *view* to public view and inspection and in such manner as to
14 cause the same to be conspicuously exposed and of public notoriety, and this at a long time prior to the alleged location thereof by plaintiff; and from the working and exposing of said *view* and the explorations thereof as aforesaid plaintiff was enabled to observe and perceive the same and did see the same, and by and through such working, exposing, and development of said *view* by defendants and the observation, perception, and knowledge thereof thus acquired by plaintiff he now claims to be the discoverer thereof.

Therefore your petitioners will and do deny that plaintiff was the discoverer of said vein within the meaning of the laws of the United States in such case made and provided, and therefore a dispute and controversy arises under the laws of the United States which involves a correct construction and right decision thereof.

And, further, showing matter in dispute and involving a construction of the laws of the United States, your petitioners allege, and by plaintiff's complaint in this action show, that plain-
15 tiff, among his acts upon which he relies in support of his alleged ownership of the Lake View West claim, has marked said claim with end lines which are not, and are not intended to be, parallel with each other, and are in such direction that it is an impossibility that they can be at right angles with any lode discovered or that could exist, the line on the west end being N. 10° W. 269 feet; thence N. 4° 40′ W. 298 feet to post marked N. W. cor. Lake View West claim, and the line on the easterly end is from the N. E. cor. S. 31° 50′ E. to E. L. L. post; thence S. 30° E. 149 feet to post marked N. E. cor. of Lake View West mine, as will more particularly appear by Exhibit A, hereunto annexed and made part hereof. Your petitioners maintain that by such marking the right of possession of mineral land belonging to the United States cannot be obtained.

Therefore should it be proved that the Pamlico claim of defendants is invalid, as charged by plaintiff in his complaint, yet by said complaint does he show that the Lake View West is not a valid claim.

And, further showing as aforesaid, plaintiff will, at the trial
16 of this cause, claim and attempt to show in support of his pretended cause of action that the veins, lodes, or ledges perceptible in the territory called by him the Lake View West claim have a course across the course of the Pamlico claim from its end to end, and that therefore he had under the provisions of the law of the United States, according to his construction thereof, the right to make the location of the Lake View West claim and did thereby obtain the right of possession thereof.

Defendants deny that said lodes, veins, and ledges have the course aforesaid, and this denial involves construction of the laws of the United States, as it may be true that for a few feet in places the course is easterly and westerly; yet such fact would not establish the direction of their general course, which is that contemplated by United States law.

And defendants further maintain that under a proper construction of the laws of the United States plaintiff is not entitled to the ledges or lodes perceptible in said territory called Lake View
17 West, although their general course be proved to be and is across said Pamlico claim, nor if said lodes, ledges, or veins extend across and cut the Pamlico lode or vein upon which the location notice was posted, and that because of the valid location of the said Pamlico claim as aforesaid defendants, under proper construction of United States law, *is* entitled to have the exclusive right of possession and enjoyment of all the surface included within the lines of the said Pamlico claim, and of all *views*, lodes, and ledges, the top or apex of which lies inside of such surface lines extended downwards vertically and that, to-, independent of their course; to all of which plaintiff will contend to the contrary.

As further matter in dispute involving — as aforesaid petitioners show that plaintiff alleges in his complaint, in the 6th subdivision thereof, and it is hereby admitted, that on the 17th day of October, A. D. 1888, one of the defendants, for himself and other defendants, made an application to the register and receiver of the United
18 States land office at Carson, Nevada, to purchase and receive from the United States a patent for a certain piece of mineral land situate in Hawthorne mining district, Esmeralda county, Nevada, known as the Pamlico claim, and in the 7th subdivision of said complaint that notice thereof was given and published; and afterwards, on the 16th day of December, 1888, plaintiff commenced a proceeding, which caused the said register and receiver to stay said application until the matter should be disposed of in a court of competent jurisdiction; hence this action to determine, among other things, the right to possession to so much of said mineral land as is claimed by plaintiff, as well also the right of defendants to purchase and receive patent therefor from the United States; and your petitioners allege it to be a fact and will prove on the trial of this cause that they and their grantors have continuously and uninter-
-uptedly held and worked their said Pamlico mining claim and that part thereof upon which plaintiff has made his so-called
19 location for more than two years, which is a longer period than the time prescribed by the statute of limitations for mining claims of the State of Nevada, before the pretended right of the plaintiff was made or asserted and for more than two years prior to the 29th day of September, 1888, to wit, since the 29th day of July, 1885, and did on said 29th day of September, 1888, hold said claim and still continue- to hold the same, and were on said day and still are working the same, and defendants thereby claim and maintain that under the provisions of law of the United

States they are entitled to the possession thereof and a patent therefor in *compliance* to the application they have made.

Plaintiff maintains that the existence of said facts does not establish a right in defendants to such possession or patent for said Pamlico claim.

And the defendants hereby offers J. W. Hogan and D. Rosenthal, of Esmerelda county, Nevada, as sureties for *his* entering in the circuit court of the United States for the district wherein said suit is pending on the first day of the next session of said court
20 or before a copy of the record in said suit, and for paying all costs that may be awarded by said circuit court if said court should hold that said suit was wrongfully or improperly removed thereto, and also for *his* appearing and entering special bail in such suit, if special bail was originally requisite therein, and for *his* complying in all respects with the provisions in the premises of the act of Congress of the United States, passed March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," and the acts amendatory thereof.

Wherefore defendants pray this honorable court that said cause be removed into the circuit court of the United States, ninth circuit, district of Nevada, and that this court proceed no farther in the premises.

S. A. KNAPP AND
S. A. KNAPP,
For His Codefendants,
JOHN FORBES,
D. L. BLISS,
GEO. F. FORD.
21 A. W. CROCKER,
P. M. BOWLER, JR.,
TRENMOR COFFIN, AND
P. REDDY,
Attorneys for Defendants.

STATE OF NEVADA,
County of Esmeralda, } ss:

S. A. Knapp, being duly sworn, deposes and says that he is one of the petitioners in the within-entitled action; that he has read the foregoing petition subscribed by him for himself and for his codefendants and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

S. A. KNAPP.

Subscribed and sworn to before me this 25th day of January, A. D. 1889.

W. J. HENLEY, *Clerk.*

(Here follows map marked p. 22.)

23 Endorsed: In the district court, State of Nevada, county of Esmeralda. George J. Garrison, pl't'ff, *v.* S. A. Knapp *et al.*, def'ts. Petition for removal. Filed Jan. 25th, 1889. W. J. Henley, clerk. Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

Bond on Removal.

Know all men by these presents that I, S. A. Knapp, as principal, and J. W. Hogan and D. Rosenthal, sureties, are jointly and severally held and firmly bound unto Geo. J. Garrison, of the county of Esmeralda, State of Nevada, in the sum of one thousand ($1,000) —, U. S. gold coin; for which, well and truly to be paid unto the said G. J. Garrison, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals and dated this 25th day of January, A. D. 1889.

The condition of this obligation is such that if the said S. A. Knapp and also D. L. Bliss, Geo. F. Ford, John Forbes, de-
24 fendants in a suit commenced in the district court of the State of Nevada in and for the county of Esmeralda, shall enter in the circuit court of the United States for the ninth circuit, district of Nevada, on the first day of the next session thereof, a copy of the record in said suit and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully and improperly removed thereto, and shall also then appear and enter special bail in said suit, if special bail be requisite therein, and shall enter appearance of said S. A. Knapp, and also John Forbes, D. L. Bliss, and Geo. F. Ford in said court, then this obligation to be void and otherwise to remain in full force and effect.

In witness whereof the said obligors have hereunto set their hands and seals this 25th day of January, A. D. 1889.

S. A. KNAPP. [SEAL.]
J. W. HOGAN. [SEAL.]
D. ROSENTHAL. [SEAL.]

STATE OF NEVADA, }
County of Esmeralda, } *ss:*

25 J. W. Hogan and D. Rosenthal, being duly sworn, each deposes and says that he is a surety on the foregoing undertaking; that he is a resident and a freeholder in the State of Nevada; that he is worth the sum of one thousand — ($1,000) over and above all his just debts and liabilities and exclusive of property exempt from execution, and he has property in the State of Nevada liable to execution of the value of more than one thousand dollars.

J. W. HOGAN.
D. ROSENTHAL.

Subscribed and sworn to before me this 25th day of January, A. D. 1889.

[COUNTY CLERK'S SEAL.] W. J. HENLEY,
County Clerk.

Endorsed: In the dist. court of the State of Nevada, county of Esmeralda. Geo. J. Garrison, pl't'ff, *vs.* S. A. Knapp *et al.*, defendants. Bond for removal. Filed January 25, 1889. W. J. Henley, clerk. Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

26 *Order of Removal.*

In the District Court of the State of Nevada, County of Esmeralda.

GEORGE J. GARRISON, Plaintiff,
v.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEORGE F. FORD,
Defendants.

On the pleadings and proceedings herein and on the petition and bond filed herein by the above defendants, under the provisions of an act of the Congress of the United States passed March 3d, 1875, entitled An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes, and acts amendatory thereof and supplemental thereto, and on motion of A. W. Crocker and P. M. Bowler, Jr., of counsel for defendants, it is ordered that the security offered by said defendants be, and the same is hereby, approved, and that the State court proceed no further in this cause, and that this cause be removed into the circuit court of the United States for the ninth circuit, State of Nevada.

27 Dated this 12th day of February, 1889.

RICH'D RISING, *Dist. Judge.*

Endorsed: In the district court of the State of Nevada, county of Esmeralda. George J. Garrison, plaintiff, *vs.* S. A. Knapp *et al.*, defendants. Order of removal. Filed Feb'y 12, 1889. W. J. Henley, clerk. Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

Clerk's Certificate.

STATE OF NEVADA,
County of Esmeralda, } *ss:*

I, W. J. Henley, county clerk of said county and *ex officio* clerk of the district court of the State of Nevada in and for the county of Esmeralda, do hereby certify the foregoing to be a correct copy of the original complaint, summons, petition for removal, bond for removal, & order for removal in said action, with the indorsements thereon, now on file in my office.

[SEAL.] Witness my hand and the seal of said court this 12th day of February, A. D. 1889.

W. J. HENLEY, *Clerk.*

28 Endorsed: Filed March 11, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

Demurrer.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

GEORGE J. GARRISON, Plaintiff,
vs.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEORGE F. FORD, Defendants.

Now come the above-named defendants and demur to the complaint filed herein, and for cause of demurrer aver that the facts alleged in plaintiff's — are not sufficient to constitute a cause of action.

Wherefore the defendants pray that they may be hence dismissed with their costs.

TRENMOR COFFIN,
Att'y for Defendants.

P. REDDY, *Of Counsel.*

I hereby certify that I am of counsel for the defendants
29 in the above-entitled cause, and that in my opinion the foregoing demurrer of the defendants is well founded in point of law and proper to be filed in the above cause.

P. REDDY,
Of Counsel for Defendants.

Endorsed: United States circuit court, ninth circuit, district of Nevada. Geo. J. Garrison, plaintiff, *vs.* S. A. Knapp, J. Forbes, D. L. Bliss, and Geo. F. Ford, def'ts. Demurrer to complaint. Due service of within demurrer admitted this 13th day of May, 1889. Rob't M. Clarke, attorney for pl'ff. J. D. Torreyson, of counsel. Filed May 13, 1889. T. J. Edwards, clerk. P. Reddy, of counsel. Trenmor Coffin, attorney for defendants, rooms 28, 29, 30, 33, 35, 36, 330 Pine street, San Francisco, Cal.

30 *Motion to Remand.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

GEORGE J. GARRISON, Plaintiff,
v.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants.

Motion to remand for want of jurisdiction.

Now comes the above-named plaintiff and moves the court to remand the above-entitled case to the district court of the State of Nevada in and for the county of Esmeralda, from which court said above-entitled case has been removed. Said motion will be made at the court-room of the above-entitled court on the 13th day of June, 1889, at 10 o'clock a. m. of said day, and will be made upon the grounds following, to wit:

1. That this court has no jurisdiction of the subject-matter of the action, it appearing from the complaint filed and also from the petition for removal filed that the action is not one arising
31 under the Constitution or laws of the United States, and that its decision does not depend upon a disputed construction of the Constitution or laws of the United States.

It further appears from the complaint on file and also from the petition for removal that all of the parties to said action, plaintiff and defendants, are residents and citizens of the United States and of the State of Nevada.

Said motion will be made and said plaintiff will rely upon all of the papers and files now of record in the above-entitled case, and also upon the record of this court in Pamlico Mining Co. *vs.* Geo. J. Garrison *et al.*

ROB'T M. CLARKE,
Attorney for Plaintiff.

R. H. LINDSAY,
J. D. TORREYSON,
Of Counsel.

Endorsed: In the U. S. cir. c't, ninth circuit, dist. of Nevada. Geo. J. Garrison, pl'ff, *vs.* S. A. Knapp, John Forbes, *et al.*, def'ts. Motion to remand. Filed June 8, 1889. T. J. Edwards, clerk.

32 *Minutes of Court, Showing All Proceedings Had and Taken in said Cause by the Circuit Court.*

MARCH 19, 1889.

GEO. J. GARRISON
vs.
S. A. KNAPP *et al.*

On motion and by consent of counsel it is ordered that the defendants have ten days' additional time to plead in said action.

MARCH 25TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

On motion of their attorneys, it is ordered that defendants have until the 15th day of next May to plead to the complaint herein.

JUNE 3D, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

On motion and by consent of counsel, ordered that the hearing of the demurrer herein be, and the same is hereby, continued until next rule day.

33

JUNE 13TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

The motion to remand was this day argued and submitted by counsel for the respective parties and taken under advisement by the court.

Order Remanding.

JUNE 17TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

The motion to remand having been argued and submitted and duly considered by the court, it is now ordered that the same be, and is hereby, granted, and that this cause be returned to the State court for Esmeralda county, from whence it came, for further proceedings therein.

It is further ordered that the clerk withhold said order to remand until the further order of this court.

Order Fixing Bond.

JUNE 19, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

34 On motion of counsel for defendants, ordered that proceedings under the order to remand be stayed thirty days and until the further order of the court to enable the defendants to file a supersedeas bond in the sum of five hundred dollars and take out a writ of error.

30 *Motion to Remand.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

GEORGE J. GARRISON, Plaintiff,
v.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants.

Motion to remand for want of jurisdiction.

Now comes the above-named plaintiff and moves the court to remand the above-entitled case to the district court of the State of Nevada in and for the county of Esmeralda, from which court said above-entitled case has been removed. Said motion will be made at the court-room of the above-entitled court on the 13th day of June, 1889, at 10 o'clock a. m. of said day, and will be made upon the grounds following, to wit:

1. That this court has no jurisdiction of the subject-matter of the action, it appearing from the complaint filed and also from the petition for removal filed that the action is not one arising
31 under the Constitution or laws of the United States, and that its decision does not depend upon a disputed construction of the Constitution or laws of the United States.

It further appears from the complaint on file and also from the petition for removal that all of the parties to said action, plaintiff and defendants, are residents and citizens of the United States and of the State of Nevada.

Said motion will be made and said plaintiff will rely upon all of the papers and files now of record in the above-entitled case, and also upon the record of this court in Pamlico Mining Co. *vs.* Geo. J. Garrison *et al.*

ROB'T M. CLARKE,
Attorney for Plaintiff.

R. H. LINDSAY,
J. D. TORREYSON,
Of Counsel.

Endorsed: In the U. S. cir. c't, ninth circuit, dist. of Nevada. Geo. J. Garrison, pl'ff, *vs.* S. A. Knapp, John Forbes, *et al.*, def'ts. Motion to remand. Filed June 8, 1889. T. J. Edwards, clerk.

32 *Minutes of Court, Showing All Proceedings Had and Taken in said Cause by the Circuit Court.*

MARCH 19, 1889.

GEO. J. GARRISON
vs.
S. A. KNAPP *et al.*

On motion and by consent of counsel it is ordered that the defendants have ten days' additional time to plead in said action.

MARCH 25TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

On motion of their attorneys, it is ordered that defendants have until the 15th day of next May to plead to the complaint herein.

JUNE 3D, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

On motion and by consent of counsel, ordered that the hearing of the demurrer herein be, and the same is hereby, continued until next rule day.

33

JUNE 13TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

The motion to remand was this day argued and submitted by counsel for the respective parties and taken under advisement by the court.

Order Remanding.

JUNE 17TH, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

The motion to remand having been argued and submitted and duly considered by the court, it is now ordered that the same be, and is hereby, granted, and that this cause be returned to the State court for Esmeralda county, from whence it came, for further proceedings therein.

It is further ordered that the clerk withhold said order to remand until the further order of this court.

Order Fixing Bond.

JUNE 19, 1889.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

34 On motion of counsel for defendants, ordered that proceedings under the order to remand be stayed thirty days and until the further order of the court to enable the defendants to file a supersedeas bond in the sum of five hundred dollars and take out a writ of error.

Bond on Writ of Error.

Supreme Court of the United States.

GEO. J. GARRISON, Plaintiff,
vs.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants.

Know all men by these presents that we, S. A. Knapp, John Forbes, D. L. Bliss, Geo. F. Ford, W. D. Tobey, and D. A. Bender, are held and firmly bound unto Geo. J. Garrison, of Esmeralda county, Nevada, in the sum of five hundred (500) dollars, to be paid to the said Geo. J. Garrison, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and
35 administrators, firmly by these presents.

Sealed with our seals and dated this 5th day of July, A. D. 1889.

Whereas the above-named S. A. Knapp, John Forbes, D. L. Bliss, and Geo. F. Ford have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment and order rendered by the said circuit court of the United States, ninth circuit, district of Nevada, remanding said cause to the district court of the State of Nevada in and for the county of Esmeralda:

Now, therefore, the condition of this obligation is such that if the above-named S. A. Knapp, John Forbes, D. L. Bliss, and Geo. F. Ford shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

W. D. TOBEY, [SEAL.]
D. A. BENDER, [SEAL.]
S. A. KNAPP,
JOHN FORBES,
D. L. BLISS,
GEO. F. FORD,
By TRENMOR COFFIN, *Their Att'y.*

UNITED STATES OF AMERICA, } *ss:*
District of Nevada, }

36 W. D. Tobey and D. A. Bender, being first duly sworn, do*th* depose and say that *he is* worth the sum of five hundred dollars ($500) over and above *his* just debts and liabilities, exclusive of property exempt from execution in property situated in the State of Nevada.

W. D. TOBEY.
D. A. BENDER.

Subscribed and sworn to before me this 5th day of July, A. D. 1889.

[NOTARIAL SEAL.] P. V. MIGHELS,
Notary Public.

Endorsed: In U. S. circuit court, 9th circuit, district of Nevada. Geo. J. Garrison *vs.* S. A. Knapp *et al.* Bond on writ of error. Approved July 5th, 1889. Geo. M. Sabin, judge. Filed July 5, 1889. T. J. Edwards, clerk.

37 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the ninth circuit, district of Nevada, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Geo. J. Garrison plaintiff, and S.A. Knapp, John Forbes, D. L. Bliss, & Geo. F. Ford, defendants, a manifest error hath happened, to the great damage of the said S. A. Knapp, John Forbes, D. L. Bliss, & Geo. F. Ford, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday, the 14th day, of October next, in the said Supreme Court to be then and there held,
38 that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 5th day of July, A. D. 1889, and of our Independence the 114th.

[Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.]

T. J. EDWARDS,
Clerk U. S. Circuit Court, Ninth Circuit & District of Nevada.

39 [Endorsed:] In U. S. circuit court, 9th circuit, district of Nevada. Geo. J. Garrison *vs.* S. A. Knapp *et als.* Writ of error. Filed July 5, 1889. T. J. Edwards, clerk.

Service of within writ by copy is hereby admitted this 6th day of July, 1889.

J. D. TORREYSON,
Of Counsel for Pl'ff.

40 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Geo. J. Garrison Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday, the 14th day, of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, ninth circuit and district of Nevada, wherein S. A. Knapp, John Forbes, D. L. Bliss, and Geo. F. Ford, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honourable M. W. Fuller, Chief Justice of the said Supreme Court, the 5th day of July, A. D. 1889, and of our Independence the 114th.

GEO. M. SABIN, *Judge.*

41 [Endorsed:] In U. S. circuit court, 9th circuit, district of Nev. Geo. J. Garrison *et al. vs.* S. A. Knapp *et als.* Citation. Filed July 5, 1889. T. J. Edwards, clerk.

Service of within citation by copy is hereby admitted this 6th day of July, 1889.

J. D. TORREYSON,
Of Counsel for Pl'ff.

42 *Assignment of Error.*

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

GEO. J. GARRISON, Plaintiff,
vs.
S. A. KNAPP, JOHN FORBES, D. L. BLISS, and GEO. F. FORD, Defendants.

Defendants' assignment of error.

Defendants assign as error in the above-entitled cause the rendering and entering of the judgment and order of said court remanding said cause to the district court of the State of Nevada in and for the county of Esmeralda.

Wherefore said defendants pray that said judgment and order be reversed.

TRENMOR COFFIN,
P. REDDY, AND
A. W. CROCKER,
Att'ys for Defendants.

Endorsed: In U. S. circuit court, 9th circuit, district of Nevada. Geo. J. Garrison *vs.* S. A. Knapp *et al.* Assignment of error. Filed July 5th, 1889. T. J. Edwards, clerk.

43 In the Circuit Court of the United States, 9th Circuit and District of Nevada.

GEO. J. GARRISON
v.
S. A. KNAPP *et al.*

I, T. J. Edwards, clerk of the circuit court of the United States for the ninth circuit and district of Nevada, do hereby certify that the foregoing forty-two pages, numbered from 1 to 42, inclusive, are a true copy of the record and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this the 20th day of July, A. D. 1889.

[Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.]

T. J. EDWARDS, *Clerk.*

Endorsed on cover: Case No. 13,680. Nevada C. C. U. S. No. 119. S. A. Knapp, John Forbes, D. L. Bliss, and George F. Ford, plaintiffs in error, *vs.* George J. Garrison. Filed October 1, 1889.